

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. C 14-0780 SC
)	
UNITED STATES OF AMERICA)	ORDER DENYING MOTIONS TO
)	SUPPRESS, STRIKE, AND FOR
Plaintiff,)	<u>SUMMARY JUDGMENT</u>
)	
v.)	
)	
\$209,815 IN UNITED STATES)	
CURRENCY,)	
)	
Defendant.)	
)	
)	
JULIO FIGUEROA,)	
)	
Claimant.)	
)	
)	

I. INTRODUCTION

Now before the Court are several motions in this civil forfeiture case. First, Claimant Julio Figueroa moves to suppress evidence seized during his interaction with Drug Enforcement Agency ("DEA") Agents at the San Francisco International Airport ("SFO"). ECF No. 18 ("Mot. to Suppress"). Second, the Government moves for summary judgment, alleging Figueroa, "will be unable to adduce sufficient evidence to establish any affirmative defense," and, alternatively, lacks standing to contest the forfeiture. ECF No.

56 ("SJ Mot."). Finally, the Government moves to strike Figueroa's claim and for entry of default judgment for Figueroa's failure adequately to respond to special interrogatories. ECF No. 59 ("Mot. to Strike"), as amended ECF No. 62 ("Am. Mot. to Strike). These motions are fully briefed.¹ The Court conducted an evidentiary hearing on the motion to suppress and heard oral argument on the motion. ECF No. 78 ("Hr'g Tr."). The remaining motions are appropriate for resolution without oral argument under Civil Local Rule 7-1(b). As explained below the motions are all DENIED.

II. BACKGROUND

A. Findings of Fact on Motion to Suppress

The Court finds the following facts after the testimony of three witnesses at the evidentiary hearing: DEA Special Agents Leo Bondad and Paul Harris (collectively, "the Agents"), and Figueroa, as well as exhibits received at that hearing and other documents submitted in support of the motion.

This is a civil forfeiture case arising out of \$209,815 in United States currency ("the Currency") seized from Claimant's checked luggage at the SFO. The currency was uncovered during the

¹ ECF Nos. 39 ("Suppress Opp'n"), 42 ("Suppress Reply"), 57 ("SJ Opp'n"), 64 ("SJ Reply"), 69 ("Strike Opp'n"), 75 ("Strike Reply"). After the Government filed its motion to strike, Figueroa served supplemental answers to interrogatories and filed notice that he intended to rely on those answers at the hearing on the motion for summary judgment. See ECF No. 68 ("Notice"). Finding no oral argument necessary, the Court vacated the motion hearing under Civil Local Rule 7-1(b). Nevertheless, the Court ordered supplemental briefing to address what impact, if any, Figueroa's supplemental answers would have on the then-fully briefed summary judgment motion. ECF Nos. 76 ("Figueroa Supp. Br."), 80 ("Gov't Supp. Br.").

1 course of a DEA interdiction involving Figueroa, a DEA Confidential
2 Source, and five DEA Agents: Bondad, Harris, Boston Special Agent
3 David O'Neill, San Francisco Group Supervisor Aaron Jenkins, and
4 Task Force Agent Kevin O'Malley.

5 The investigation began with a tip by a confidential source
6 that Figueroa had purchased a one-way ticket from New York's John
7 F. Kennedy International Airport ("JFK") to SFO that night, and
8 that Figueroa would arrive in SFO the next day with two checked
9 bags. Further investigation revealed that the phone number used to
10 book the ticket was connected in the DEA's Narcotics and Dangerous
11 Drugs Information System ("NADDIS") to multiple marijuana
12 trafficking investigations and that Figueroa had a prior arrest for
13 narcotics possession. In order to identify Figueroa after leaving
14 his flight, the Agents reviewed the photo associated with his
15 California ID Card.

16 Before Figueroa's flight arrived, the Agents, dressed in
17 street clothes, began surveillance of the gate. After Figueroa
18 deplaned, the Agents surreptitiously followed him and observed him
19 remove two large suitcases from the baggage carousel and begin
20 walking toward the elevator. The Agents took the escalator to the
21 second floor near where Figueroa would exit the elevator. One
22 agent, Bondad, stood to the side of the elevator doors while the
23 other, Harris, stood approximately 15 feet away from the elevators
24 across an area of high pedestrian traffic. Neither Agent's
25 position blocked Figueroa's most direct path to the terminal exit.

26 After Figueroa stepped off the elevator, Agent Bondad called
27 out "Julio?" Figueroa turned, but did not respond immediately and
28 continued walking toward the exit. Agent Bondad repeated "Are you

1 Julio?" and, in the same motion, showed his DEA credentials.
2 Figueroa stopped and responded "No." Agent Bondad asked if
3 Figueroa had identification, and Figueroa gave Agent Bondad his
4 California ID card. Seeing that Figueroa's first name was, in
5 fact, Julio, Bondad said "You are Julio. Why did you lie about
6 your name?" and returned the ID card. Figueroa responded that he
7 said "no" because he did not recognize Agent Bondad. Bondad then
8 explained that he was a DEA agent, and told Figueroa he "wasn't in
9 trouble" and was free to leave. Bondad stated that they were
10 looking for people trafficking "dope" and asked Figueroa if he was
11 carrying any narcotics or contraband with him. After Figueroa said
12 no, Bondad asked, pointing out Agent Harris (who also displayed his
13 DEA credentials), "would you mind if we search your bags?"
14 Figueroa agreed, and Harris moved closer as Figueroa handed him one
15 of the bags. Harris moved the bag to another public area of the
16 terminal roughly 10 feet away with less pedestrian traffic. After
17 kneeling down next to the bags, Harris noticed they were locked and
18 asked Figueroa for the combination to unlock the bags. Figueroa
19 gave the agents the combination, and upon unlocking the bags and
20 searching the contents, the Agents discovered and seized the
21 Currency, which was bundled in two backpacks inside each of
22 Figueroa's bags.

23 At no time during the encounter was Figueroa advised of his
24 right to decline consent to search. He was, however, told at the
25 beginning of the encounter that he was free to leave. The Agents
26 did not advise Figueroa that they would seek a warrant if he
27 declined consent. It was uncontroverted that Figueroa and the
28 Agents remained calm throughout the encounter, no guns were drawn,

1 Figueroa was never told he was under arrest, and no Miranda
2 warnings were given.

3 **B. Additional Background**

4 The remaining facts come from the parties' submissions and in
5 some cases remain in dispute.

6 After seizing the Currency, the Agents questioned Figueroa.
7 Both parties agree Figueroa said "we can cut the chit chat now,"
8 and that "I didn't say [the Currency] was mine" but also that "I
9 didn't say that [the Currency] wasn't mine," although they disagree
10 about what Figueroa meant to communicate by these statements.

11 Compare ECF No. 57-1 ("Figueroa Decl.") at ¶ 5, with SJ Mot. at 3,
12 ¶ 9. Similarly, the parties disagree about the Agents' claim that
13 during the search, Figueroa only asserted ownership over a bundle
14 of a few thousand dollars wrapped in a deposit slip. Compare
15 Figueroa Decl. at ¶ 6, with SJ Mot. at 3, ¶ 9.

16 Following the seizure of the currency, obtaining the
17 Figueroa's contact information, and explaining the civil forfeiture
18 process, the Figueroa left the airport. The Agents determined that
19 the Currency consisted of 13,644 bills, 13,554 of which were in
20 denominations of \$20 or less. After placing the Currency in
21 evidence bags and hiding it in an inconspicuous location, a trained
22 narcotics dog, Jackson, alerted that the Currency smelled of
23 illegal drugs.

24 Subsequently, the Government filed a complaint for civil
25 forfeiture under 21 U.S.C. Section 983 arguing that the Currency is
26 forfeitable as "proceeds traceable" to the sale of illegal drugs.
27 21 U.S.C. § 881(a)(6). Figueroa intervened, filing a verified
28 claim and answer required under the statute and asserting "an

1 ownership and possessory interest in, and the right to exercise
2 dominion and control over, all the defendant property." ECF Nos.
3 11 ("Claim"), 14 ("Answer").

4 Shortly thereafter, the Government served special
5 interrogatories under the Supplemental Rules for Admiralty or
6 Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules")
7 "to gather information that bears on the claimant's standing."
8 Advisory Committee Note to Subd. 6 of Supp. R. G; see also Supp. R.
9 G(6). Figueroa objected to the scope of these interrogatories, and
10 the Government filed a motion to compel, which the Court granted.
11 ECF No. 48 ("Mot. to Compel Order"). Relying chiefly on the Ninth
12 Circuit's decision in United States v. \$133,420, 672 F.3d 629 (9th
13 Cir. 2012), the Court found that Figueroa's objections were
14 unfounded, and his responses were insufficient, and ordered
15 supplemental answers.

16 After Figueroa supplemented his answers, the Government moved
17 to strike Figueroa's verified claim for failure to adequately
18 respond to interrogatories. Mot. to Strike at 1; see also Supp. R.
19 G(8)(c)(i)(A) (authorizing motions to strike for failure to answer
20 special interrogatories). Following the Government's motion to
21 strike, Figueroa once again supplemented his answers, although the
22 Government argues they are still insufficient. Figueroa opposes
23 the motion, reiterating his contention that the interrogatories
24 exceed the scope permitted by the Supplemental Rules and arguing
25 that, in any event, they are sufficient.

26 Finally, the Government has also moved for summary judgment on
27 the forfeitability of the currency, the sufficiency of Figueroa's
28 affirmative defenses, and Figueroa's alleged inability to show

standing to contest the forfeiture. Figueroa opposes.

III. LEGAL STANDARD

A. Motion to Suppress

The Fourth Amendment ordinarily bars the admission of evidence seized as fruit of an illegal search. Nix v. Williams, 467 U.S. 431, 441-42 (1984). This rule also applies in civil forfeiture proceedings. See One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, (1965); United States v. \$186,416, 590 F.3d 942, 949 (9th Cir. 2010) ("The Fourth Amendment exclusionary rule applies to civil forfeiture proceedings."). Further, Rule G(8)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules") permits a claimant to move to suppress the use of the property seized as evidence provided that party has "standing to contest the lawfulness of the seizure"

1. Fourth Amendment Seizure

The Fourth Amendment "protects two types of expectations, one involving 'searches,' and the other 'seizures.'" United States v. Jacobsen, 466 U.S. 109, 121 (1984). A person may be "seized" within the meaning of the Fourth Amendment if an officer uses physical force or a "show of authority" to restrain an individual. Brendlin v. California, 551 U.S. 249, 254 (2007). When the intent of officers to restrain an individual is ambiguous, we look to whether "in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." Id. at 255 (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)); see also California v. Hodari D., 499 U.S. 621, 628

(1991).

The Ninth Circuit has enumerated several factors to guide the analysis of whether an encounter with police constitutes a seizure. Specifically, Courts should look to the number of officers, whether weapons were drawn, the location in which the encounter occurred, the officers' tone or manner, and whether the officers informed the person he could terminate the encounter. United States v. Washington, 490 F.3d 765, 771-72 (9th Cir. 2007).

2. Consent to Search

Similarly, the Fourth Amendment protects individual expectations of privacy from unreasonable searches. Nonetheless, "[a]n individual may waive his Fourth Amendment rights by giving voluntary and intelligent consent to a warrantless search of person, property, or premises." United States v. Torres-Sanchez, 83 F.3d 1123, 1130 (9th Cir. 1996). Voluntariness is determined by the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). In the Ninth Circuit, the Court's voluntariness analysis is driven by five factors, none of which is dispositive. United States v. Brown, 563 F.3d 410, 415 (9th Cir. 2009). These factors are: (1) whether the individual was in custody; (2) whether officers had their guns drawn; (3) if Miranda warnings were given; (4) if officers informed the individual that they had a right to decline consent; and (5) whether officers told the individual that a search warrant could be obtained. Id.; see also United States v. Ortiz-Flores, 462 F. App'x 759, 760 (9th Cir. 2011).

B. Motion for Summary Judgment

Entry of summary judgment is proper "if the movant shows that

1 there is no genuine dispute as to any material fact and the movant
2 is entitled to judgment as a matter of law." Fed. R. Civ. P.
3 56(a). Summary judgment should be granted if the evidence would
4 require a directed verdict for the moving party. Anderson v.
5 Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). The moving party
6 bears the initial burdens of production and persuasion. Nissan
7 Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099,
8 1102 (9th Cir. 2000).

9 **C. Motion to Strike**

10 The Supplemental Rules permit the Government to file a motion
11 to strike a verified claim "at any time before trial . . . for
12 failing to" answer special interrogatories or for lack of standing.
13 Supp. R. G(8)(c)(i)(A), (B). A motion to strike under the
14 Supplemental Rules is "'something like a motion to dismiss where we
15 can look to matters outside the pleadings, and where appropriate,
16 allow for the possibility of conversion to summary judgment.'" United States v. \$671,160.00, 730 F.3d 1051, 1055 (9th Cir. 2013)
17 (quoting United States v. \$6,976,934.65 Plus Interest, 478 F. Supp.
18 2d 30, 38 (D.D.C. 2007)) (internal alterations omitted).

20
21 **III. DISCUSSION**

22 **A. Motion to Suppress**

23 In support of his motion to suppress, Figueroa makes two
24 arguments. First, he contends that his encounter with the Agents
25 constituted an illegal seizure within the meaning of the Fourth
26 Amendment, thus rendering the subsequent search unlawful.
27 Alternatively, Figueroa argues that even if he was not seized, his
28 consent to search was involuntary. Accordingly, Figueroa asks that

1 the currency be suppressed. Figueroa asserts, and the Government
2 does not contest, that he has standing to bring the motion to
3 suppress.

4 1. Seizure

5 Figueroa contends that he was seized within the meaning of the
6 Fourth Amendment because the Agents lacked reasonable suspicion to
7 detain him, and Agent Bondad's actions constituted a "show of
8 official authority" which a reasonable person would not feel free
9 to refuse. Mot. at 8. Specifically, Figueroa states that Bondad
10 repeatedly calling out his name and displaying his badge would make
11 "clear to any reasonable person in Figueroa's shoes[] not only that
12 he was not free to leave, but that he, specifically, was the
13 subject of an investigation." Id. at 9. The Government does not
14 contend that the Agents had reasonable suspicion to detain
15 Figueroa, instead arguing that because the encounter was
16 consensual, Figueroa was never seized within the meaning of the
17 Fourth Amendment.

18 The Government is right. No unlawful seizure took place in
19 this case. Generally speaking, law enforcement officers are free
20 approach individuals in a public place and ask them questions. See
21 Florida v. Royer, 460 U.S. 491, 497 (1983); United States v. Woods,
22 720 F.2d 1022, 1026 (9th Cir. 1983). "The fact that the officer
23 identifies himself as a police officer does not convert the
24 encounter into a seizure requiring some level of objective
25 justification." Woods, 720 F.2d at 1026. Instead, the key
26 question is whether, "in view of all the circumstances surrounding
27 the incident, a reasonable person would have believed that he was
28 not free to leave." Mendenhall, 446 U.S. at 554. Weighing the

1 totality of the circumstances, the Court concludes that a
2 reasonable person would have believed he was free to leave.

3 Numerous facts weigh in favor of finding that a reasonable
4 person would feel free to leave. First, and most compellingly,
5 Figueroa was specifically told by Agent Bondad that he was not in
6 trouble and was free to leave. The conversation between Figueroa
7 and the agents happened in public and remained calm throughout.
8 The Agents were dressed in plain clothes and, although they were
9 armed, their weapons were never displayed. The Agents never
10 touched Figueroa or otherwise blocked his path to the exit, and
11 they remained a reasonable distance away at all times. Despite the
12 characterization in Figueroa's briefing that he was "ordered" to
13 produce identification, the testimony at the evidentiary hearing
14 supports the Court's finding that Agent Bondad simply asked if
15 Figueroa had identification -- a request to which Figueroa
16 responded by handing over his ID card. After confirming his
17 identity, Bondad immediately returned Figueroa's identification to
18 him.

19 Figueroa argues that two facts constitute a show of authority
20 sufficient to render this encounter a seizure. First, before
21 displaying his badge, Agent Bondad called out "Julio," to which
22 Figueroa turned, but did not respond and continued walking. Only
23 after repeating his statement and simultaneously displaying his
24 badge did Figueroa stop and respond to Bondad. Second, in calling
25 out to Figueroa, Bondad used Figueroa's first name, indicating
26 prior knowledge of his identity and communicating at least the
27 inference that Figueroa was the target of a criminal investigation.
28 Figueroa argues that as a result, (1) the Agents ignored his

1 intention to decline the encounter and leave the airport, and (2)
2 by using his name, the Agents communicated that Figueroa,
3 "specifically, was the subject of an investigation." Unfortunately
4 for Figueroa, neither the cases he cites nor the weight of the
5 relevant facts are in his favor.

6 First, the fact that Figueroa did not respond to Agent
7 Bondad's initial attempt to get his attention does not render this
8 encounter a seizure. Figueroa's response to Bondad's initial
9 "Julio?", turning, but continuing to walk toward the exit, did not
10 constitute an "unequivocal unwillingness to engage in further
11 conversation" United States v. Hernandez, 27 F.3d 1403,
12 1406 (9th Cir. 1994) (quoting United States v. Wilson, 953 F.2d
13 116, 123 (4th Cir. 1991)). Instead, under these circumstances, the
14 Court is persuaded that repeating "[a]re you Julio?" was
15 reasonable. The encounter happened in a public place, no physical
16 force was used, the Agents did not block Figueroa's exit or show
17 their weapons, and remained calm and conversational throughout.
18 Moreover, at the time Figueroa allegedly intended to decline the
19 encounter -- after Agent Bondad initially said "Julio?" -- Bondad
20 had not yet displayed his DEA credentials. As a result, Figueroa
21 could not have known he was speaking to law enforcement, let alone
22 unequivocally declined to speak with them.

23 Furthermore, the fact that Bondad displayed his identification
24 and used Figueroa's name (rather than some other generic greeting)
25 does not alter this conclusion. First, "[t]he fact that the
26 officer identifies himself as a police officer does not convert the
27 encounter into a seizure requiring some level of objective
28 justification." Woods, 720 F.2d at 1026. Furthermore, as at least

1 one other court has found, using an individual's name in initiating
2 a consensual encounter does not render that encounter a seizure.
3 See United States v. Sealey, 30 F.3d 7, 10 (1st Cir. 1994) (finding
4 a defendant was not seized when an officer approached him and
5 called out "Hey Stephen, what's up?").

6 In short the Court is persuaded that under these circumstances
7 a reasonable person would have felt free to leave. Hence, this
8 encounter was not a seizure.

9 2. Consent

10 Having found that Figueroa was not seized within the meaning
11 of the Fourth Amendment, the only remaining issue on the motion to
12 suppress is whether Figueroa voluntarily consented to the search of
13 his luggage. As discussed earlier, in the Ninth Circuit, the
14 Court's voluntariness analysis is driven by five factors, none of
15 which is dispositive. United States v. Brown, 563 F.3d 410, 415
16 (9th Cir. 2009). These factors are: (1) whether the individual was
17 in custody; (2) whether officers had their guns drawn; (3) if
18 Miranda warnings were given; (4) if officers informed the
19 individual that they had a right to decline consent; and (5)
20 whether officers told the individual that a search warrant could be
21 obtained. Id.; see also United States v. Ortiz-Flores, 462 F.
22 App'x 759, 760 (9th Cir. 2011).

23 Here, these factors favors weigh in favor of voluntariness.
24 Having earlier found that Figueroa was not seized, he cannot be
25 deemed to have been in custody. Because Figueroa was not in
26 custody, "Miranda warnings [are] inapposite." Brown, 563 F.3d at
27 416 (quoting United States v. Patayan Soriano, 361 F.3d 494, 501
28 (9th Cir. 2004)). Furthermore, it is undisputed that the officers

1 were dressed in plain clothes, and their weapons were concealed
2 throughout the encounter. While the Agents did not inform Figueroa
3 of his right to decline consent to search, "this factor is not an
4 absolute requirement for a finding of voluntariness," and in any
5 event he was earlier advised that he was not in trouble and was
6 free to leave. Id. (citing Schneckloth, 412 U.S. 248-49).
7 Finally, while testimony differed on whether the Agents told
8 Figueroa that a search warrant could be obtained if he declined
9 consent, the Court finds Bondad and Harris' testimony on that point
10 more convincing and concludes that the Agents never advised
11 Figueroa that they would obtain a search warrant if he declined
12 consent.

13 At the hearing on the motion to suppress, Claimant's counsel
14 made much of the fact that the Agents had a consent form that could
15 have been used to obtain a written waiver of Figueroa's Fourth
16 Amendment rights, but nonetheless chose not to use it. He also
17 extensively questioned the Agents regarding various DEA policies
18 and guidelines, insinuating that these guidelines also encourage
19 officers to obtain a signed consent form under circumstances like
20 this. While this may be true, the Court finds it is nonetheless
21 inapposite. The fact that officers could have obtained a more
22 unassailable type of consent to search does not change the Court's
23 conclusion that the consent they actually did obtain was voluntary.

24 As a result, the Court finds that Figueroa voluntarily
25 consented to the search of his luggage. Having found that Figueroa
26 was also not seized within the meaning of the Fourth Amendment, the
27 motion to suppress is DENIED.

28 ///

1 **B. Motion for Summary Judgment and Alternative Motion to**
2 **Strike**

3 Next, the Government moves for summary judgment on three
4 issues. First, the Government argues that the Court should grant
5 summary judgment on the issue of the forfeitability of the currency
6 at issue. Second, the Government contends that summary judgment on
7 the remaining issues is appropriate because Figueroa will not be
8 able to provide sufficient evidence to establish any of his
9 affirmative defenses. Third, and in the alternative, the
10 Government moves to strike Figueroa's claim on the grounds that he
11 has failed to establish standing to contest the forfeiture.
12 Because standing is a "threshold matter," the Court will address
13 the alternative motion based on standing first. See United States
14 v. 5208 Los Franciscos Way, 385 F.3d 1187, 1191 (9th Cir. 2004).

15 The Ninth Circuit has yet to identify the burden on the issue
16 of a forfeiture claimant's standing at the summary judgment stage.
17 \$133,420, 672 F.3d at 638. Nevertheless, the Ninth Circuit has
18 articulated some applicable general principles. First, the
19 claimant may not rely on mere allegations, but must instead "'set
20 forth' by affidavit or other evidence 'specific facts . . . '"
21 demonstrating his standing. Id. Second, the Court must ask itself
22 whether "'a fair minded jury' could find that the claimant has
23 standing on the evidence presented." Id. (quoting Liberty Lobby,
24 477 U.S. at 252). In doing so, the existence of minimal evidence
25 is insufficient -- instead there must be sufficient evidence for
26 the jury to find for plaintiff on the issue. Id.

27 The Government urges the Court to fill in any blanks left by
28 the Ninth Circuit in this area with cases and principles derived

1 from Federal Rule of Civil Procedure 12(b)(1), which governs
2 motions to dismiss for lack of subject-matter jurisdiction. This
3 appears to be a novel argument, but because the general principles
4 articulated by the Ninth Circuit in \$133,420 resolve the issue in
5 Figueroa's favor, there is no need to decide to what extent
6 principles derived from the Rule 12(b)(1) context are applicable
7 here.

8 First, as the Ninth Circuit has suggested, "[t]he fact that
9 the property was seized from the claimant's possession, for
10 example, may be sufficient evidence, when coupled with a claim of
11 ownership, to establish standing at the summary judgment stage."
12 Id. at 639 (citing United States v. \$148,840.00, 521 F.3d 1268,
13 1277 (10th Cir. 2008)); see also United States v. \$167,070, No.
14 3:13-CV-00324-LRH-VPC, 2014 WL 3697252, at *4 (D. Nev. July 23,
15 2014). That is precisely the circumstance at issue here.
16 Figueroa's verified claim asserts and ownership interest in the
17 Currency, and the Currency was undisputedly seized directly from
18 his possession. Nevertheless, even if this is not enough to
19 establish standing, Figueroa has responded to the Government's
20 motion with an affidavit explaining that the Currency is his life
21 savings, accumulated partially through legitimate employment as a
22 freelance graphic designer and youth advocate on immigration
23 issues, and partially through a cash inheritance from his
24 grandmother. ECF No. 57-1 ("Figueroa Decl.") ¶¶ 2-3.
25 Additionally, Figueroa explained that he was travelling with the
26 Currency because he planned to invest it in a restaurant during a
27 trip to New York, however, for unexplained reasons the deal did not
28 come about and he returned home to San Francisco with the money.

1 Id. at ¶ 4.

2 The Government objects to this declaration, arguing that it is
3 simply a "conclusory, self-serving affidavit, lacking detailed
4 facts and any evidence," and therefore it is insufficient to create
5 a genuine issue of material fact. See \$133,420, 672 F.3d at 638
6 (quoting FTC v. Publ'g Clearing House, Inc., 104 F.3d 1168, 1171
7 (9th Cir. 1997)). The Court disagrees. This case does not involve
8 the "[u]nexplained naked possession of a cash hoard," United States
9 v. \$42,500, 283 F.3d 977, 983 (9th Cir. 2002) (quoting United
10 States v. \$321,470, 874 F.2d 298, 304 (5th Cir. 1989)), an
11 equivocal statement that the claimant has an "ownership and/or a
12 possessory interest" in the currency, \$133,420, 672 F.3d at 640, or
13 the use of the Fifth Amendment as a sword and shield. Id. at 640-
14 41. On the contrary, the declaration reiterates Figueroa's
15 ownership and possessory interest in the Currency, and explains
16 both the circumstances by which he acquired the Currency and why he
17 possessed it when it was seized. This, coupled with the fact that
18 the Currency was seized directly from Figueroa's possession is
19 enough to persuade the Court that, at this point, the record
20 supports the conclusion that Figueroa has standing to contest the
21 forfeiture.

22 Nevertheless, the Government contests Figueroa's declaration
23 further, arguing that the Court should disregard it because
24 Figueroa has resisted the Government's discovery requests and
25 because his declaration contradicts statements he allegedly made to
26 the Agents following the search of his luggage. The Government's
27 first point is raised in the parallel motion to strike for failure
28 to adequately respond to special interrogatories, and the Court

1 will address it there. The second point, that the declaration
2 contradicts the Agent's version of events after the currency was
3 seized, is irrelevant. A forfeiture claimant need not show that
4 the evidence of his standing is undisputed or prove standing by a
5 preponderance of the evidence at the summary judgment stage.
6 Instead, the claimant must, as Figueroa has here, set forth
7 specific facts, "which for the purposes of the summary judgment
8 motion will be taken as true" to show that a reasonable jury could
9 find the claimant has standing. \$133,420, 672 F.3d at 638
10 (emphasis added). Because Figueroa has done that, the Government's
11 motion is DENIED as to standing.

12 The remainder of the Government's motion seeks summary
13 judgment on the question of whether the Currency is subject to
14 forfeiture and on Figueroa's affirmative defenses. Under 21 U.S.C.
15 Section 881(a)(6), seized currency is subject to forfeiture if (1)
16 it is intended to be furnished in exchange for controlled
17 substances, (2) it is proceeds "traceable" to such exchanges, or
18 (3) it is otherwise used or meant to be used to facilitate
19 violation of the Controlled Substances Act. Here, the Government
20 argues the currency is either the proceeds of illegal drug sales or
21 is traceable to such sales. As a result, the Government must show
22 a connection between the Currency and illegal drug trafficking by a
23 preponderance of the evidence. 18 U.S.C. § 983(c)(1); United
24 States v. \$493,850, 518 F.3d 1159, 1170 (9th Cir. 2008).

25 The problem with this motion is that it is premature. Because
26 the Government filed this and its other motions so early in the
27 case, there has not been a case management conference. As a
28 result, Figueroa is currently barred from taking any discovery.

1 See Civ. L.R. 16-7. "Generally where a party has had no previous
2 opportunity to develop evidence, and the evidence is crucial to
3 material issues in the case, discovery should be allowed before the
4 trial court rules on a motion for summary judgment." Program
5 Eng'g, Inc. v. Triangle Pubs., Inc., 634 F.2d 1188, 1193 (9th Cir.
6 1980). Here, part of the basis for forfeitability is the alert of
7 the drug dog, Jackson. As other cases have recognized, the records
8 of a drug-sniffing dog and the testimony of the dog's handler are
9 relevant to the reliability of the dog's alert. See, e.g., Florida
10 v. Harris, 133 S. Ct. 1050, 1057-58 (2013); United States v.
11 \$10,700, 258 F.3d 215, 230 & n.10 (3d Cir. 2001). Similarly,
12 Figueroa disputes large portions of the Agents' description of
13 events. At a minimum, he suggests he should be permitted to obtain
14 discovery regarding the Agents and to depose them prior to the
15 Court addressing summary judgment. ECF No. 57-2 ("Burch 56(d)
16 Decl.") at ¶¶ 4-5. The Government notes in its reply that it would
17 not object to the Court allowing discovery into these matters.
18 Reply at 3.

19 As a result, the Court finds that the Government's summary
20 judgment motion is premature, and that the motion should be DENIED
21 WITHOUT PREJUDICE. Fed. R. Civ. P. 56(d)(1). The Court will
22 instead schedule a case management conference at which the parties
23 and the Court can determine how best to proceed with discovery.

24 **C. Motion to Strike**

25 Finally, the Government has moved to strike Figueroa's claim
26 on the grounds that he has failed to provide adequate answers to
27 the Government's special interrogatories. In the context of civil
28 forfeiture proceedings, Supplemental Rule G(6) permits the

1 government to serve special interrogatories that "broadly allow the
2 government to collect information regarding the claimant's
3 relationship to the defendant property . . ." United States v.
4 \$133,420, 672 F.3d 629, 642 (9th Cir. 2012). The Court may strike
5 a verified claim for failure to respond to special interrogatories.
6 Supp. R. G(8)(c)(i)(A).

7 The Court previously granted a motion to compel Figueroa to
8 respond to the Government's special interrogatories. ECF No. 49
9 ("Order"). In that order, the Court rejected Figueroa's argument
10 that because his verified claim and limited responses to the
11 Government's special interrogatories were sufficient to establish
12 his standing to contest forfeiture, no further responses could be
13 compelled. Subsequently Figueroa twice supplemented his answers.
14 ECF No. 82-1 ("Chart").

15 The Government's chief complaints at this stage are threefold.
16 First, Figueroa continues to assert numerous boilerplate objections
17 despite the Court's order to the contrary. Second, Figueroa's
18 second supplemental answers were untimely and unauthorized. Third,
19 his answers to most of the special interrogatories are
20 insufficient. Figueroa disagrees with these arguments, instead
21 arguing that the Court should reconsider its prior order because
22 the Court misinterpreted the Supplemental Rules and the Ninth
23 Circuit's decision in \$133,420 in granting the Government's motion
24 to compel. Figueroa also asserts that his answers are sufficient
25 to satisfy both the requirements of the Supplemental Rules and the
26 Court's prior order, and that striking his claim would be an
27 inappropriately severe sanction at this stage.

28 As a preliminary matter, the Court declines to reconsider the

1 order on the motion to compel. Figueroa's chief objection to the
2 order granting the motion to compel is that because Figueroa is
3 asserting an ownership interest in the Currency, his standing to
4 contest the forfeiture is clear. As the Court found above,
5 Figueroa has provided sufficient detail to show his standing at
6 this time. That said the Government may, on the basis of
7 subsequent discovery, seek to rebut that evidence. See United
8 States v. \$574,840, 719 F.3d 648, 652-53 (7th Cir. 2013). By the
9 Court's reading of the Supplemental Rules and applicable precedent,
10 that does not relieve Figueroa of the obligation to respond to
11 special interrogatories. See \$133,420, 672 F.3d at 642 (rejecting
12 the argument that "because a claimant can establish standing merely
13 by asserting an interest in the property, and because the advisory
14 committee's note to Supplemental Rule G(6) limits the
15 interrogatories to questions 'bearing on a claimant's standing' it
16 follows that Rule G(6) allows only questions regarding the identity
17 of the claimant and the type of legal interest asserted.").
18 Figueroa clearly disagrees, but disagreement with the Court's
19 orders is not a basis for reconsideration. See Civ. L.R. 7-9(b)-
20 (c).

21 As to the Government's first point, the Court agrees. The
22 Court has little patience for the unjustified (but puzzlingly
23 pervasive) practice of asserting numerous, often frivolous
24 boilerplate objections with any discovery response. See United
25 States v. \$333,806.93, No. CV 05-2556 DOC (ANx), 2010 WL 3733932,
26 at *2 (C.D. Cal. Aug. 30, 2010) ("In addition to being
27 substantively incorrect, [Claimant's] stated objections to
28 the . . . special interrogatories constitute cursory

boilerplate."); see also Sec. Nat'l Bank v. Abbott Labs., 299 F.R.D. 595, 596 (N.D. Iowa 2014) ("Today's 'litigators' . . . often object using boilerplate language containing every objection imaginable, despite the fact that courts have resoundingly disapproved of such boilerplate objections.") (footnote omitted). This is further underscored by the fact that the Court already overruled these objections in granting the Government's motion to compel. See \$333,806.93, at *2 ("The insufficiency of boilerplate objections seems especially striking . . . given the Court's previous order specifically instructing [Claimant] to respond to the special interrogatories").

Despite that, Figueroa is correct in arguing that he has fully responded to some of the Government's interrogatories.

Specifically, the Court finds that Figueroa has adequately answered interrogatories number 1, 2, and 5-9. This is a close question on some. For example, interrogatory number 2 seeks a description of the circumstances under which Figueroa acquired the Currency, and if acquired at different times, the circumstances under which each interest was acquired. While Figueroa has simply stated he acquired roughly half the Currency from a cash inheritance and the remainder from his employment, the Court finds this satisfactorily explains the "circumstances" by which he acquired the Currency. Explaining the "circumstances" of acquiring the Currency does not require, as it seems the Government believes, Figueroa to go through each specific instance during which he performed some freelance graphic design or consulting work and explain the project and identify the amount of money he received. Instead, the Court reads this request and others like it, for example number 5, as

1 only requiring a general description of the circumstances.

2 Similarly, in his response to interrogatory number 6, Figueroa
3 states that he obtained a small amount of the Currency in paychecks
4 from a prior employer, Instituto Familiar de la Raza, and provided
5 two paystubs. ECF No. 68-1 ("Supplemental Answers") at 16. The
6 Government's issue with Figueroa's response is somewhat unclear.
7 The Government states Figueroa's answer is "incomplete" because
8 Figueroa said "he obtained 'most of the defendant property in cash'
9 and 'some small portion' in checks from Instituto Familiar,"
10 without offering more detail about the exact problem with this
11 answer. Strike Reply at 7 (quoting ECF No. 68-1 ("Supplemental
12 Answers") at 18). As best as the Court can discern, the
13 Government's issue is that Figueroa responded without
14 "identify[ing] the payor and payee of the check(s), the amount of
15 the check(s), and the approximate date of the check(s)," as
16 requested. Supplemental Answers at 16. However there are several
17 problems with the Government's view. First, Figueroa has
18 identified the payor (Instituto Familiar), the payee (himself), and
19 the approximate dates during which he received the relevant checks
20 (2007-2009). Second, even if Figueroa has not listed every check
21 he received from Instituto Familiar or given the exact amount of
22 those checks, "[o]n motion or on its own," the Court must weigh the
23 burden of proposed discovery against its likely benefit. Fed. R.
24 Civ. P. 26(b)(2)(C)(iii). Figueroa claims that the Currency is his
25 life savings and that any checks form only a small portion of the
26 Currency. Furthermore, Figueroa has already provided information
27 about the payor, payee, and approximate dates of any relevant
28 checks. Given those facts, the Court finds that the burden of

1 providing additional detail regarding checks that are in some cases
2 as much as seven years old would be unduly burdensome in light of
3 the relatively small probative value of such information.
4 Accordingly the Court finds this response is also sufficient. If
5 the Government can articulate some reason why the benefits of this
6 information outweigh the burden then it may simply seek this
7 information in the ordinary course of discovery.

8 At the same time, the Government is right that Figueroa's
9 answers to some of the special interrogatories remain deficient in
10 several respects. Specifically the Court finds Figueroa's answers
11 to interrogatories numbers 3, 4, and 10 are insufficient. Figueroa
12 argues interrogatories 3 and 10 need not be answered with anything
13 but objections because they either (1) seek production of
14 documents, and (2) exceed the scope of the Supplemental Rules
15 because they seek information that does not bear on the claimant's
16 standing. Not so. First, request number 3 asks Figueroa to
17 identify any records or documents he has with specificity.
18 Supplemental Answers at 6. While Figueroa argues that
19 "[i]dentifying 'any' documents that you have 'with specificity' is
20 asking for the production of documents." Opp'n at 17. This is
21 obviously mistaken, and the Court has previously rejected any
22 suggestion that the Government's interrogatories are actually
23 requests for production. See Order at 5. Similarly, interrogatory
24 number 10 asks Figueroa to identify people with information
25 relating to his claims of ownership and possession of the Currency.
26 While Figueroa contends this has no bearing on his standing, that
27 is not the test. Instead, the Supplemental Rules permit
28 interrogatories to probe the claimant's "relationship to the

1 defendant property" Supp. R. G(6). As the Ninth Circuit
2 found, while endorsing a special interrogatory seeking, among other
3 things, "the names, address and telephone numbers of the persons
4 from whom the currency was obtained," and "witnesses, including the
5 names addresses, and telephone numbers of such witnesses, to any of
6 the transactions by which the defendant currency was obtained,"
7 such questions are "well within the scope of the rule." \$133,420,
8 672 F.3d at 636 & n.5. Finally, the Court finds Figueroa's
9 response to interrogatory number 4 is insufficiently detailed.
10 Interrogatory number 4 seeks a list of sources of the Currency,
11 including a list of persons from which the Currency was obtained
12 and dates on which that occurred. While Figueroa has stated that
13 he works as a "freelance consult[ant] and graphic design[er]," with
14 "Art-based organizations," his response to interrogatory number 4
15 fails to identify those organizations or any other clients he may
16 have had as a freelance graphic designer and how much, if known, he
17 obtained from each source. Supplemental Answers at 12. Without
18 more detail, the Court cannot conclude that Figueroa has adequately
19 answered these interrogatories.

20 Nevertheless, the Court is not persuaded that the Government's
21 suggested remedy -- striking Figueroa's claim as a sanction for
22 failure to comply with the Supplemental Rules -- is appropriate at
23 this time. As the advisory committee notes to the Supplemental
24 Rules point out, "[n]ot every failure to respond to subdivision (6)
25 interrogatories warrants an order striking the claim."
26 Furthermore, this is not a case in which the claimant has
27 completely failed to respond to special interrogatories, see United
28 States v. \$24,700, No. 2:10-cv-03118-GEB-DAD, 2012 WL 458412, at

*2-3 (E.D. Cal. Feb. 10, 2012), missed the deadline to respond by an unreasonable period of time, see United States v. \$67,900, No. 2:13-cv-01173 JAM-AC, 2013 WL 6440211, at *2 (E.D. Cal. Dec. 9, 2013), or failed to respond after seemingly abandoning the litigation. See United States v. \$10,000, No. 1:11-cv-01845-SKO, 2013 WL 5314890, at *4-5 (E.D. Cal. Sept. 20, 2013). On the contrary, Figueroa's answers, while inadequate in places, evince candor and effort.

Rather than strike Figueroa's claim at this point, the Court DENIES the motion to strike without prejudice and ORDERS Figueroa to serve supplemental answers to special interrogatories numbers 3, 4, and 10 within fourteen (14) days from the signature date of this order. If Figueroa's answers remain insufficient after supplementation, the Government may re-file its motion to strike.

V. CONCLUSION

For the reasons set forth above, the Court ORDERS as follows:

- Figueroa's motion to suppress is DENIED.
- The Government's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE. The Government may re-file a motion for summary judgment after the parties have had an opportunity to conduct more discovery. See Fed. R. Civ. P. 56(d).
- The Government's motion to strike for failure to provide adequate responses to special interrogatories is DENIED WITHOUT PREJUDICE.
- Figueroa is ORDERED to file supplemental answers to special interrogatories number 3, 4, and 10 within

fourteen (14) days. If he does not do so, or his answers remain insufficient after supplementation, the Government may re-file its motion to strike.

IT IS SO ORDERED.

Dated: December 8, 2014



UNITED STATES DISTRICT JUDGE